

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,793

MARK KEPNER,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

FILED
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APR 25 1990
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ON APPLICATION FOR DISCRETIONARY REVIEW

JURISDICTIONAL BRIEF OF RESPONDENT

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INTRODUCTION

In this Brief, the Petitioner MARK KEPNER will be referred to as the Defendant or the Petitioner. The Respondent THE STATE OF FLORIDA will be referred to as the State or the Respondent.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as a generally correct overview of the proceedings below.

QUESTION PRESENTED

WHETHER THERE EXISTS DIRECT CONFLICT BETWEEN THE DISTRICT COURTS ON THE ISSUE OF WHETHER WRITTEN REASONS MUST BE PROVIDED WHEN IMPOSING A DOWNWARD DEPARTURE SENTENCE UNDER THE YOUTHFUL OFFENDER STATUTE.

SUMMARY OF ARGUMENT

The Third District Court of Appeals has certified that its decision is in direct conflict with the Fourth District opinion of State v. Green, 541 So.2d 789 (Fla. 4th DCA 1989) and the Second District opinion of State v. Nealy, 532 So.2d 1117 (Fla. 2nd DCA 1988). The State agrees; however, it asks that this Court implicitly overrule the aforementioned two cases by denying discretionary review.

ARGUMENT

THERE EXISTS DIRECT CONFLICT BETWEEN THE DISTRICT COURTS ON THE ISSUE OF WHETHER WRITTEN REASONS MUST BE PROVIDED WHEN IMPOSING A DOWNWARD DEPARTURE SENTENCE UNDER THE YOUTHFUL OFFENDER STATUTE.

The Third District Court, in its opinion, acknowledged that its decision was in direct conflict with the Fourth District case of State v. Green, 541 So.2d 789 (Fla. 4th DCA 1989) and the Second District case of State v. Nealy, 532 So.2d 1117 (Fla. 2nd DCA 1988). It also stated that its decision was in accordance with the Fifth District opinion of Wiedeman v. State, 506 So.2d 1079 (Fla. 5th DCA 1987).

The State did not file an appeal from the district court opinion on either the Green or Nealy case. The State would ask that this Court deny discretionary review, and in so doing, implicitly overrule the decisions of Green and Nealy. In the alternative, the State would agree that discretionary review is warranted.

CONCLUSION

Wherefore, based on the foregoing reasons and authorities cited herein, the Respondent respectfully requests that this Court overrule the Green and Nealy decisions by denying discretionary review in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF APPELLANT was furnished by United States mail to BENNETT H. BRUMMER, Public Defender, 1351 Northwest 12th Street, Miami, Florida 33125 on this 23 day of April, 1990.

Monique L. Befeler
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